Before the
Federal Communications Commission
Washington, D.C.

In the Matter of	)	
	)	
Policies and Rules Concerning	)	MM Docket No. 93-48
National Children's Television Programming	)	
	)	
Revision of Programming Policies	)	
for Television Broadcast Stations	)	

COMMENTS OF THE UNITED STATES CATHOLIC CONFERENCE

The United States Catholic Conference ("Conference") submits the following comments in the above-captioned proceeding ("Notice"), released April 7, 1995 by the Federal Communications Commission ("Commission").

INTEREST OF USCC

The United States Catholic Conference is a nonprofit corporation organized under the laws of the District of Columbia. Its members are the active Catholic Bishops in the United States. The Conference advocates and promotes the pastoral teachings of the Bishops in such diverse areas as education, family life, health and hospitals, social welfare, immigrant aid, poverty assistance, civic education, youth activities, and communications. When permitted by agency rules and practices, the Conference files comments in rulemakings of importance to the Catholic Church and its people in the United States, particularly when the rights of children and their parents are implicated.

Argument

The Commission has asked for public comment on several proposals to enforce the Children's Television Act of 1990, 47 U.S.C. §§ 303(b)(1990), among them, requiring each television licensee to air at least 3 hours per week of educational programming. The Conference supports promulgation of this quantitative requirement as a necessary and reasonable safeguard for the well-being of children.

The Commission, in its *Notice* has asked the public for studies and reports on television and children to provide support for any action it takes. The Commission already has before it, in response to its 1993 rulemaking proceeding in this docket and

its 1994 *en banc* hearings on children's television, an abundance of reports and studies indicating the powerful effect on children of educational and other forms of television programs. Additional studies may be interesting and useful but are not legally required as a foundation for a decision by the Commission to promulgate qualitative guidelines which seek to protect children and support parents' claim to authority in their homes.

The Supreme Court has not required scientific exactitude when legislative and administrative bodies take actions helpful to children and their parents. The Court has deferred to the judgements of legislators and administrators when harm to children is at issue. Even when a state acts in the sensitive area of constitutionally protected rights, the Supreme Court has upheld state action "aimed at protecting the physical and emotional well-being of youth." New York v. Ferber, 468 U.S. 747, 757 (1982); *see also* FCC v. Pacifica Foundation, 438 U.S. 726 (1978); Ginsberg v. New York, 390 U.S. 629 (1968). The Commission does not need proof that meets scientific standards to support a decision that qualitative regulations serve the interests of children. The Supreme Court has upheld the decisions of state authorities that restrict the speech of some when the state determined that such restrictions will promote the well-being of children. Bethel School District No. 403 v. Fraser, 478 U.S. 675, 684 (1986); New York v. Ferber, 458 U.S. 747 (1982); Ginsberg v. New York, 390 U.S. 629 (1968). In Bethel, the Supreme Court upheld the action of the state in prohibiting indecent speech at a high school assembly without requiring the state to make a showing that indecent speech directly caused identifiable harm to high-school age children. In Ferber, New York state made its legislative determination that even non-obscene (as defined in Miller v. California, 413 U.S. 15 (1973)) pornographic materials using children as subjects is harmful to the physiological, emotional and mental health of children. The Court held that the determination "easily passes muster under the First Amendment." New York v. Ferber, 458 U.S. at 758. Even when the ability of adults to sell erotic, non-obscene print material is affected, this Court has approved legislation prohibiting such sales to minors. Ginsberg v. New York, *supra*. The legislative judgment that exposure to non-obscene, but pornographic materials "[impairs] the ethical and moral development of our youth and is a clear and present danger to the people of the state" was held to be a rational and sustainable means of "safeguarding such minors from harm." *Id.* at 641.

The Court sustained that legislative judgment even though it expressed doubt that the legislature's finding of harm "expresses an accepted scientific fact." Id. at 641. It was enough that a legislature reasonably could determine that "minors' reading and seeking sex material" is "harmful." Id. In the area of children's television, Congress has made findings indicating the harm to American children from the lack of educational programs and the super-abundance of commercial programs and messages on over the air television. H.R. 101-385, pp. 1609-1612; S.Rep. 101-66, pp. 1628-1640. The

Commission, too, had previously reviewed studies and reports and reached the same conclusions. 1974 Children's Television Report and Policy Statement, 31 RR 2d 1228 (1974); Children's Television Programming and Advertising Practices, 96 FCC 2d 634 (1984). Given the compelling government interest in protecting children and the findings of Congress and the Commission of the harm to children from the absence of educational programming, it is reasonable for the Commission to promulgate quantitative regulations.

Qualitative guidelines are not only reasonable, but are a necessary means of furthering the fundamental interest of parents in inculcating the values of their children. The Supreme Court has found the "natural duty of the parent" to educate his or her children to be part of the fourteenth amendment liberty interest in marriage, establishing a home, and raising children. Meyer v. Nebraska, 262 U.S. 390, 399, 400 (1923). Parental nurture and direction of children is not just a "right" but a "high duty." Pierce v. Society of Sisters, 268 U.S. 510, 525 (1925); *see* Prince v. Massachusetts, 321 U.S. at 166. In Ginsberg v. New York, 390 U.S. at 639, this Court stated that it:

> has consistently recognized that the parents' claim to authority in their own household is basic in the structure of our society. [quotation from Prince v. Massachusetts omitted]. The legislature could properly conclude that parents . . . who have this primary responsibility for children's well-being are entitled to the support of law designed to aid discharge of that responsibility.

The "primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition." Wisconsin v. Yoder, 406 U.S. 205, 232 (1972).

Qualitative regulations precisely and reasonably support this tradition. Parental authority is undermined by commercial television licensees' bombardment of violent entertainment aimed at children each day. That commercial broadcast licensees do little for children except air blocks of program-length commercials masquerading as educational programs was made plain to the Commission more than one year ago by speaker after speaker during the *en banc* hearings in this docket. Commenters today, notably the Center for Media Education, have provided abundant evidence that commercial television licensees continue to offer almost nothing for children except violent, mindless entertainment programs. It was precisely this problem, among others, that Congress sought to rectify by passage of the Act five years ago. The current lack of educational programs on commercial television, which reaches the homes of almost every American household, diminishes parents' ability to choose useful material for their

children. Neither the current failure to require educational programs by every television licensee nor the remaining parental option of tossing out the family television are the type of "law designed to aid discharge of . . . [parental] responsibility" to which parents are entitled. Ginsberg, 390 U.S. at 639. Requiring parents to guard children from the television all day to shield them from non-educational programs is neither fair, reasonable or viable. Television, as the Commission well knows, "has established a uniquely pervasive presence in the lives of all Americans." FCC v. Pacifica Foundation, 438 U.S. at 748. When almost all programs aired lack educational value and alternatives are few, turning off the message after it is heard is too little, too late, as the Court held in Pacifica, 438 U.S. at 748-49. The pervasiveness of television and the danger of indecency support the Commission's regulations channeling indecency to hours when children are less likely to be unsupervised. Requiring licensees to air at least three hours per week of educational childrens programs is similarly supported by the nature of the content of the majority of offerings thrust at children coupled with the ease of access to televisions by all children.

Conclusion

The Commission's current minimal regulations have done little since passage of the Children's Television Act of 1990 to fulfill the Act's aim to increase educational television programs for children. The Commission need only turn on a television to see this for itself. Unless quantitative regulations are imposed, the Act will remain a nullity.

Respectfully submitted,

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